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Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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Working Group on International Cooperation
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Bilateral and multilateral agreements or arrangements for international cooperation in criminal matters

Enhancing the coordinating functions of central authorities designated under article 18, paragraph 13, of the United Nations Convention against Organized Crime

Bilateral and multilateral international cooperation arrangements and the coordinating functions of central authorities

Background paper prepared by the Secretariat

I. Introduction

1. In its decision 2/2, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to establish an open-ended working group of government experts on international cooperation to hold substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation. Furthermore, in its decision 3/2, the Conference decided that the Working Group on International Cooperation would be a constant element of the Conference. To date, the Working Group has held four meetings: on 11 and 12 October 2006, from 8 to 10 October 2008, on 20 and 21 October 2010 and on 15, 16 and 18 October 2012. During those meetings, expert consultations were held on extradition, mutual legal assistance and international cooperation for the purpose of confiscation, and recommendations were made to the Conference on those issues.

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2. The present paper has been prepared by the Secretariat to provide background information and to aid the discussions of the Working Group on the relevant agenda items.

II. Bilateral and multilateral agreements or arrangements for international cooperation in criminal matters

A. Background

3. Transnational crime can be addressed effectively only through inter-State cooperation. While many modes of formal and informal cooperation between States exist, the fact that judicial cooperation in criminal matters requires the consent of States means that it is often grounded in formal treaty relations. The conclusion of bilateral and multilateral treaties, conventions, protocols and covenants thus provides predictable rules for cooperation in the form of a legal relationship through which international assistance can be provided.

4. Not all countries require a treaty basis for judicial cooperation, and many are able to provide assistance on the basis of reciprocity or comity. In the first cycle of reporting on the implementation of the Organized Crime Convention, for example, almost 80 per cent of reporting States indicated that they could grant extradition by virtue of reciprocity or comity and approximately 85 per cent indicated that mutual legal assistance could be granted on that basis.[1] Similarly, data collected by the United Nations Survey on Crime Trends and Operations of Criminal Justice Systems for 2013 showed that over 80 per cent of reporting States were able to grant extradition on the basis of reciprocity, and almost all were able to grant mutual legal assistance on the basis of reciprocity.

5. However, unlike reciprocity or domestic legislation, the rules laid down in bilateral and multilateral agreements are primary sources of international law that cover both the rights and the obligations of the parties to those agreements. Those rights and obligations, such as an obligation to extradite or to provide mutual legal assistance, are commonly subject to a range of conditions, procedures or grounds for refusal, which are recognized within the agreement. Nonetheless, the fact that bilateral or multilateral agreements contain core obligations and define clear circumstances of cooperation means that judicial cooperation between States parties falling within the terms of the agreement is subject to certain binding legal terms.

6. For international cooperation practitioners, the legal basis employed, including the terms of the relevant bilateral or multilateral instrument, can have a significant impact on the success of individual requests for cooperation. Even where a State is able to provide assistance without a treaty, reliance on the agreed terms of a bilateral or multilateral instrument can assist in bridging diverse legal traditions and cultures, as well as national differences in procedural law. In addition, the existence of legal rights and obligations within the bilateral or multilateral instrument provides a clear framework governing the manner in which the requested State or States should respond to requests.

[1] See CTOC/COP/2008/CRP.7.

7. Information collected on judicial cooperation arrangements and practice in the context of action taken by Member States to implement the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem suggests an increase, in recent years, in the number of States concluding bilateral or multilateral agreements or arrangements in relation to extradition and mutual legal assistance.[2] This may be due, in part, to the catalysing effect of global instruments such as the Organized Crime Convention, the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

8. Focusing on the Organized Crime Convention as a pre-eminent global instrument addressing international cooperation in criminal matters, the present paper examines possible ways and means of enhancing the effectiveness of bilateral and multilateral agreements or arrangements for international cooperation in criminal matters, including the Organized Crime Convention itself. This paper also provides a current global overview of bilateral and regional multilateral agreements on extradition and mutual legal assistance, and considers, in that regard, the utility of the Organized Crime Convention and the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters.

B. Overview of bilateral and regional multilateral agreements

9. Among the different modalities of international cooperation in criminal matters, extradition is one that is predominantly conducted pursuant to bilateral and multilateral agreements or arrangements. Although extradition is possible on the basis of reciprocity, comity or domestic legislation, a considerable number of States have historically preferred to extradite to countries with which they have treaty relations. This trend can be identified from information provided by Member States regarding their requirements and arrangements for international cooperation in criminal matters.[3]

10. A review of bilateral treaty agreements suggests that an estimated 90 per cent of all Member States have concluded at least one bilateral agreement on extradition. While extradition treaties are common, not many States appear to have become part of extensive extradition treaty networks. Overall, the average number of bilateral extradition agreements per State is four, with the vast majority of States (88 per cent) having concluded less than 10 bilateral extradition agreements. As a result, fewer than 50 States in the world appear to have concluded agreements with 10 or more States.

11. Only about 20 States may have more than 20 bilateral extradition agreements. Those States are predominantly in Europe and the Americas, although four States in Asia and two States in Oceania also fall within that category. A very small number of States have entered into more than 50 bilateral extradition agreements, with the

[2] E/CN.7/2014/7.

[3] Data contained in this section are calculated from country-level information on national laws and bilateral and multilateral agreements collected by the Secretariat for inclusion in the directory of competent national authorities, pursuant, inter alia, to decisions 2/2 and 3/2 of the Conference.

largest number of bilateral extradition treaties entered into by a single State being more than 140.

12. The picture with respect to bilateral agreements on mutual legal assistance differs somewhat from that for extradition. Globally, fewer States have entered into agreements on mutual legal assistance, with about 80 per cent of all Member States having concluded at least one bilateral agreement on mutual legal assistance, compared with 90 per cent in the case of extradition. The total number of bilateral agreements on mutual legal assistance may, however, be higher than that for extradition, with an overall average of five bilateral mutual legal assistance agreements per State. Of those States that have entered into a bilateral agreement, only 56 per cent (compared with 88 per cent for extradition) have concluded fewer than 10 bilateral mutual legal assistance agreements. Conversely, over 65 States appear to have concluded bilateral mutual legal assistance agreements with 10 States or more, and about 35 States have entered into more than 20 bilateral mutual legal assistance agreements.

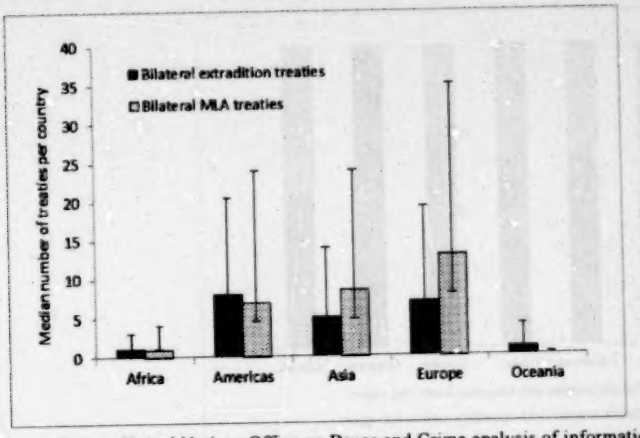
13. While the number of bilateral mutual legal assistance treaties is generally higher than that for extradition, there is a reasonable correlation[4] between the number of bilateral mutual legal assistance treaties and the number of bilateral extradition treaties concluded by a State. This suggests that States may tend to assess their extradition and mutual legal assistance requirements in a related sense, as connected components of international judicial cooperation, and to seek to conclude bilateral agreements accordingly.

14. The picture for global bilateral extradition and mutual legal assistance treaties is shown in figure I, which presents the median, lower quartile and upper quartile number of such agreements entered into, by region. The quartile bars show the high degree of variation in the number of bilateral extradition and mutual legal assistance agreements across countries. Figure I also shows the variation between regions. The average number of bilateral agreements entered into in the Americas, Asia and Europe, is higher than in Africa and Oceania. European countries have concluded overall the highest average number of bilateral treaties for mutual legal assistance.

[4] Coefficient r2=0.68.

Figure I

Average number of bilateral extradition and mutual legal assistance treaties entered into by countries, by region



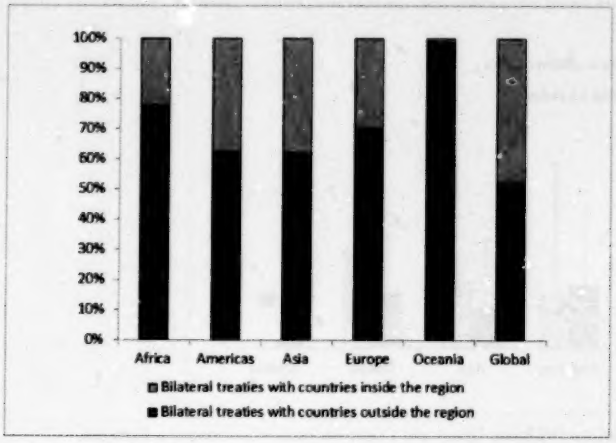
Source: United Nations Office on Drugs and Crime analysis of information from the directory of competent national authorities. Main bars represent the median number of agreements per country. Line bars represent the lower quartile and upper quartile number of agreements per country.

15. A review of available information on bilateral agreements reflects the extent to which bilateral extradition and mutual legal assistance agreements are concluded with countries within and outside the region. Figure II shows the distribution, by region, between the number of bilateral extradition or mutual legal assistance agreements among countries within a region, and the number of agreements with countries outside the region. With the exception of Oceania, where the vast majority of identified extradition and mutual legal assistance treaties are concluded with countries outside Oceania, the proportion of agreements concluded with countries outside the region is between 60 and 80 per cent, for each region. Globally, the proportion of all identified bilateral agreements between countries not in the same region is closer to 50 per cent, a result reached by counting the number of bilateral agreements between countries from different regions.[5]

[5] In figure II, bilateral agreements between countries from different regions are counted in the bar for each region. At the global level, each such treaty is counted only once, leading to an overall lower percentage than for each region individually.

Figure II

Percentage of bilateral extradition and mutual legal assistance agreements between countries within and outside each region



Source: United Nations Office on Drugs and Crime analysis of information from the directory of competent national authorities.

16. It could be anticipated that there might be a relationship between the degree to which countries conclude bilateral treaties with countries within their own region, and whether regional multilateral agreements on extradition and mutual legal assistance exist. It is possible, for example, that countries may not seek to conclude bilateral extradition or mutual legal assistance agreements with countries from within their own region where a regional multilateral treaty could be relied upon for judicial cooperation.

17. In practice, however, the determination of such a relationship is challenging for a number of reasons. Firstly, extradition and mutual legal assistance bilateral treaties may be concluded prior to the existence of regional multilateral agreements, and remain in force even if not relied upon in practice. Some European countries, for example, retain bilateral extradition treaties, dating from the early part of the twentieth century, with other countries within the region, notwithstanding the European Convention on Extradition of 1957 and, for countries within the European Union, the Council framework decision on the European arrest warrant of 2002.

18. Secondly, "regional" multilateral international cooperation agreements rarely coincide exactly with the geographical regions presented in figure II. Geographical regions usually have a number of subregional country groups, which may or may not have developed multilateral agreements for judicial cooperation. Additionally, a number of "regional" multilateral instruments are open to ratification/accession by States outside the geographical region to which the instrument primarily applies. Within Africa, multilateral agreements on judicial cooperation, extradition and mutual legal assistance include the Economic Community of West African States (ECOWAS) Convention on Extradition and Convention on Mutual Assistance in Criminal Matters; the Economic Community of Central African States (ECCAS)

agreements on extradition and judicial cooperation; the Southern African Development Community Protocol on Extradition and Protocol on Mutual Legal Assistance in Criminal Matters; the Maghreb convention on judicial cooperation; and the Intergovernmental Authority on Development Conventions on Mutual Legal Assistance and Extradition. In addition, some multilateral instruments, such as the League of Arab States Riyadh Agreement on Judicial Cooperation and the Convention on Extradition between the Member States of the Community of Portuguese-Speaking Countries, include States parties from more than one geographical region. This is also the case with multilateral instruments on international cooperation in criminal matters within the context of the Council of Europe.

19. Recent years have seen the promulgation of a significant number of regional multilateral agreements on extradition and mutual legal assistance. The table below lists examples of such treaties and demonstrates that, over the past 50 years, over 30 regional multilateral agreements related to judicial assistance in criminal matters have been concluded. Of those, 12 agreements, or protocols to agreements, have been concluded within the last 10 years. Regional multilateral agreements exist in Africa, the Americas, Asia, and Europe, and the number of States parties to such agreements ranges from about 5 to 50.

Regional multilateral agreements

A. Agreements on extradition

European Convention on Extradition (1957)

Additional Protocol to the European Convention on Extradition (1975)

Second Additional Protocol to the European Convention on Extradition (1978)

Inter-American Convention on Extradition (1981)

Economic Community of West African States Convention on Extradition (1994)

Convention on Simplified Extradition Procedure between the Member States of the European Union (1995)

Convention relating to Extradition between the Member States of the European Union (1996)

Southern African Development Community Protocol on Extradition (2002)

Economic Community of Central African States agreement on extradition (2004)

Convention on Extradition between the Member States of the Community of Portuguese-Speaking Countries (2005)

Caribbean Community Arrest Warrant Treaty (2008)

Intergovernmental Authority on Development Convention on Extradition (2009)

Third Additional Protocol to the European Convention on Extradition (2010)

Fourth Additional Protocol to the European Convention on Extradition (2012)

B. Agreements on mutual legal assistance

European Convention on Mutual Assistance in Criminal Matters (1959)

Inter-American Convention on Letters Rogatory (1975)

Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978)

Additional Protocol to the Inter-American Convention on Letters Rogatory (1979)

Riyadh Arab Agreement on Judicial Cooperation (1983)

Maghreb convention on judicial cooperation (1991)

Economic Community of West African States Convention on Mutual Assistance in Criminal Matters (1992)

Inter-American Convention on Mutual Assistance in Criminal Matters (1992)

Commonwealth of Independent States Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993)

Optional Protocol to the Inter-American Convention on Mutual Assistance in Criminal Matters (1993)

Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications (1996)

Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000)

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)

Protocol to the Convention on Mutual Legal Assistance between the Member States of the European Union (2001)

Commonwealth of Independent States Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002)

Southern African Development Community Protocol on Mutual Legal Assistance in Criminal Matters (2002)

Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters (2004)

Economic Community of Central African States agreement on judicial cooperation (2004)

Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters (2005)

Convention on Mutual Assistance in Criminal Matters between the Member States of the Community of Portuguese-Speaking Countries (2005)

South Asian Association for Regional Cooperation Convention on Mutual Assistance in Criminal Matters (2008)

Intergovernmental Authority on Development Convention on Mutual Legal Assistance (2009)

20. The combined network of bilateral and regional multilateral agreements on extradition and mutual legal assistance represents a significant legal basis for many countries seeking to engage in international judicial cooperation, despite the fact that, from a global perspective, it does not represent a uniform system. A review of bilateral agreements suggests that almost 50 countries globally do not have any bilateral extradition or mutual legal assistance agreement with a country outside their region. In addition, the scope of bilateral and multilateral judicial cooperation agreements can vary, in terms of the offences to which an agreement applies and the types of, and conditions for, assistance that may be provided under the agreement.

21. Whereas, for example, the ECCAS agreement on extradition applies to offences punishable by a deprivation of liberty of at least one year, the ECOWAS Convention on Extradition applies to offences punishable by a minimum period of two years. Similarly, the Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters provides that mutual legal assistance shall be refused if the requesting party fails to undertake that it will be able to comply with a future request of a similar nature by the requested party, but the South Asian Association for Regional Cooperation Convention on Mutual Assistance in Criminal Matters contains no equivalent requirement.

22. The provisions of the Organized Crime Convention and other multilateral agreements, such as the Convention against Corruption, as well as non-binding instruments such as the Model Treaties on Extradition and Mutual Assistance in Criminal Matters, can play a key role in harmonizing obligations and addressing legal gaps. The Organized Crime Convention provides a basis for extradition and mutual legal assistance in and of itself, in addition to obligations resulting from other bilateral or multilateral agreements related to international cooperation in criminal matters into which States parties have entered. The Convention thus offers both a way of filling a possible legal gap, where no bilateral or multilateral agreement exists between countries seeking to cooperate, and a means for increased harmonization of such bilateral and multilateral agreements.

23. At a practical level, there is limited global statistical information on the extent to which States make use of different possible legal bases for judicial cooperation, including with regard to bilateral treaties, regional multilateral treaties and international treaties, such as the Organized Crime Convention and the Convention against Corruption.[6] States parties to the Organized Crime Convention have previously provided case examples that illustrate different approaches adopted in cooperation cases in practice.[7] However, a systematic and regular collection of statistical information on the legal bases for cooperation may assist all States in understanding the use, in practice, of networks of bilateral and multilateral extradition and mutual legal assistance agreements and, in turn, the most effective methods for judicial cooperation.

C. Utility of the Organized Crime Convention, the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters

24. The Organized Crime Convention contains a number of provisions related to the legal basis of judicial cooperation. Article 16, paragraph 4, for example, provides that, where a State party makes extradition conditional on the existence of a treaty, the Convention itself may be considered a legal basis for extradition in respect of an extradition request concerning an offence covered by the Convention received from another State party with which the requested State has no extradition treaty.

25. Under article 16, paragraph 5, States parties that make extradition conditional on the existence of a treaty, but that do not recognize the Organized Crime Convention as a legal basis for cooperation on extradition, must seek to conclude treaties with other States parties. States parties are also obliged, in general, by article 16, paragraph 17, to seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. In so doing,

[6] In relation to the Convention against Corruption, a recommendation that is made consistently in the country reviews conducted within the framework of the Mechanism for the Review of Implementation of the Convention is that States parties put in place — or continue efforts to do so — and render fully operational information systems compiling in a systematic manner statistical data on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements.

[7] See, for example, CTOC/COP/2010/CRP.5

States parties undertake to include offences covered by the Convention as extraditable offences in every one of their concluded extradition treaties (art. 16, para. 3). Article 16, paragraph 3, also provides that each of the offences covered by the Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between States parties.

26. The Organized Crime Convention similarly provides that article 18, on mutual legal assistance, shall be applied to requests made pursuant to that article, if the States parties in question are not bound by a treaty of mutual legal assistance. If they are bound by such a treaty, then States parties are encouraged to apply the provisions of article 18 in lieu thereof.

27. Finally, the Organized Crime Convention calls upon States parties to conclude or consider entering into agreements or arrangements to enhance the effectiveness of international cooperation for the purposes of confiscation of proceeds of crime (art. 13, para. 9); the provision of mutual legal assistance (art. 18, para. 30); the establishment of joint investigative bodies (art. 19); the use of special investigative techniques (art. 20, para. 2); the relocation of witnesses in criminal proceedings (art. 24, para. 3); the provision of cooperation of an accused person with law enforcement authorities (art. 26, para. 5); and cooperation between law enforcement agencies (art. 27, para. 2).

28. In respect of possible reliance on the Organized Crime Convention as a legal basis for cooperation on extradition, 26 States parties have formally informed the Secretary-General that the Convention will serve as such a legal basis.[8] However, information collected in previous reporting cycles on implementation of the Organized Crime Convention suggests that the number of such States is significantly higher. Of 76 countries providing information in 2008, almost 80 per cent indicated that they recognized the Convention as a legal basis for extradition.[9] Almost 90 per cent of 91 reporting countries indicated that article 18 of the Convention, on mutual legal assistance, could be applied to provide assistance to other States parties with which no mutual legal assistance treaty was in force. This corresponds with more recent information collected through the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, which showed that many States parties also had the possibility of using the Convention against Corruption as a legal basis for cooperation.[10]

29. An examination of available national laws on extradition and mutual legal assistance suggests that national legislation does not specifically refer by name to multilateral agreements such as the Organized Crime Convention as a basis for judicial cooperation. Rather, national legislation more often refers in general terms to "international agreements" or "treaties," to which the State is a party. In some cases, legislation may specify this to be an "extradition treaty" between the country and a foreign State. In other instances, national legislation simply refers to "an

[8] Information from https://treaties.un.org as at July 2014. Article 16, subparagraph 5(a), of the Convention requires States parties that make extradition conditional on the existence of a treaty to inform the Secretary-General of the United Nations whether they will take the Convention as the legal basis for cooperation on extradition with other States parties to the Convention.

[9] See CTOC/COP/2008/CRP.7.

[10] See CAC/COSP/IRG/2014/8.

international treaty ratified by [the State]."[11] As a result, use of the Organized Crime Convention as a legal basis for cooperation may often depend upon whether national legal provisions can be interpreted to include the Organized Crime Convention as a "treaty" for the purposes of national law.

30. In this respect, citation of the Organized Crime Convention as the legal basis within a judicial cooperation request will be successful only if both parties to the request are able to accept the Convention as a "relevant treaty" as a matter of national law and policy. The Conference of the Parties to the Organized Crime Convention has previously received information on instances in which the Organized Crime Convention was cited as the legal basis in an extradition request between States parties to the Convention, and however, in which the request was declined by the requested State on the grounds that it did not accept the Convention as a legal agreement regulating extradition.[12]

31. One possibility for ensuring the successful use of the Convention as a legal basis may involve conducting consultations between countries prior to the actual submission of cooperation requests. In addition, pursuant to decisions of the Conference concerning the directory of competent national authorities,[13] the United Nations Office on Drugs and Crime (UNODC) is currently considering options for the inclusion of information regarding use of the Organized Crime Convention as a legal basis for cooperation within the directory, with a view to enhancing the knowledge and strengthening the capacity of practitioners, so that they can better understand different legal systems and their requirements with regard to international cooperation.[14]

32. The Working Group on International Cooperation has previously highlighted that the Convention may be particularly useful not only where there is no bilateral extradition agreement between States parties, but also where a bilateral agreement has been in place for a long time and contains only a limited list of extraditable offences.[15] In such cases, States parties that require an extradition treaty have the option of either relying on the Convention as a legal basis in lieu of the bilateral treaty or of applying article 16, paragraph 3, of the Convention in order to deem an offence extraditable under the existing bilateral treaty. In this way, the Convention plays a useful role in facilitating the harmonization of bilateral and multilateral arrangements and agreements. In the first cycle of reporting on the implementation of the Organized Crime Convention, for example, over 10 per cent of reporting States noted that transnational organized crime offences were not included as extraditable offences in existing bilateral or multilateral extradition treaties.[16]

33. In addition to requiring States parties to deem offences under the Convention extraditable under existing treaties, the Convention also encourages States parties to give effect to its provisions when concluding new bilateral or multilateral agreements. Thus, pursuant to article 18, paragraph 30, a State party concluding a new bilateral or multilateral agreement on mutual legal assistance is to consider

[11] Examples of national legislation from http://sherloc.unodc.org.
[12] See CTOC/COP/2010/CRP.5.
[13] See decisions 2/2 and 3/2.
[14] See E/2014/30-E/CN.15/2014/20, chap. I, sect. A, draft resolution III, para. 14.
[15] See CTOC/COP/2008/18.
[16] See CTOC/COP/2008/CRP.7.

reflecting key provisions of article 18 of the Convention in the new agreement, including the types of assistance that may be requested (art. 18, para. 3); requirements for the content of the request (art. 18, para. 14); grounds for refusal of the request (art. 18, para. 21); a prohibition on declining requests on the ground of bank secrecy (art. 18, para. 8); and provisions on costs (art. 18, para. 28). The inclusion of such provisions in bilateral and multilateral agreements reflects the modern judicial cooperation practice drawn from a wide range of treaties.

34. In addition to the provisions of the Organized Crime Convention itself, the Model Treaty on Extradition[17] and the Model Treaty on Mutual Assistance in Criminal Matters[18] are valuable tools for the development of bilateral and multilateral arrangements and agreements in the area of judicial cooperation.[19] Of relevance are also the model bilateral agreement on the sharing of confiscated proceeds of crime or property[20] and model treaties on issues where the Organized Crime Convention contains generic provisions, such as article 21, on the transfer of criminal proceedings, and article 17, on the transfer of sentenced persons.[21] From the perspective of the Organized Crime Convention, many of the provisions on extradition and mutual legal assistance closely reflect the approach of the Model Treaties. The Model Treaty on Extradition, for example, contains 18 articles covering, inter alia, extraditable offences; mandatory and optional grounds for refusal; channels of communication and required documents; simplified extradition procedures; provisional arrest; surrender and postponed or conditional surrender; the rule of speciality; concurrent requests; and costs.

35. A review of bilateral extradition treaties reveals both a number of similarities and differences with the Model Treaty on Extradition. On the one hand, the first two articles of many bilateral extradition treaties are similar to those of the Model Treaty, representing the core obligation to extradite and a definition of extraditable offences. Other areas covered by the Model Treaty also appear in most bilateral extradition treaties, although rarely in exactly the same order as in the Model Treaty. However, a number of provisions often found in bilateral treaties may not be contained in the Model Treaty. These include provisions on specific language requirements, admissibility of documents, the escape of persons whose extradition has been requested, jurisdiction and central authorities.

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[17] General Assembly resolution 45/116, annex, and resolution 52/88, annex.

[18] General Assembly resolution 45/117, annex, and resolution 53/112, annex I.

[19] At its twenty-third session, the Commission on Crime Prevention and Criminal Justice invited Member States to provide input to UNODC concerning the model treaties on international cooperation in criminal matters, in particular addressing the question of the necessity of updating or revising them. The Commission further invited Member States to provide their views during the consideration of the appropriate agenda item of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, and recommended that the Commission, at its twenty-fourth session, take into account the input received from Member States and consider initiating a review of particular model treaties on international cooperation in criminal matters (E/2014/30-E/CN.15/2014/20, chap. I, sect. A, draft resolution III, paras. 16-17).

[20] Economic and Social Council resolution 2005/14, annex.

[21] See Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118, annex) and Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners (*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annexes I and II, respectively).

36. Overall, enhancing the efficiency and effectiveness of international cooperation in criminal matters requires a concerted approach involving all bilateral and multilateral, and binding and non-binding, instruments. In the light of the fact that few States possess extensive networks of bilateral extradition or mutual legal assistance treaties, and that regional multilateral treaties, by their nature, do not provide global reach, States may increasingly need to continuously review their accepted legal bases of cooperation, as well as the range of other States with which cooperation may be required.

37. Whereas many countries, for example, conduct regular cooperation with an established small group of other countries, in an ever-more connected world, requests may increasingly be sent to or received from countries with which judicial cooperation has not previously been conducted. In such cases, States will need to identify an appropriate legal basis for cooperation and understand the procedures and requirements of the other country in a timely manner. Strengthening bilateral and multilateral arrangements or agreements for international cooperation in criminal matters may thus involve a number of concerted actions on the part of national authorities. Such actions can include:

(a) Consideration of use of the Organized Crime Convention as a legal basis for cooperation;

(b) Use of the Organized Crime Convention to interpret the scope of existing cooperation agreements;

(c) Reviewing, on a continuous basis, the need for new bilateral agreements or membership within regional multilateral agreements;

(d) Consideration of the provisions of the Organized Crime Convention and the Model Treaties on Extradition and Mutual Assistance in Criminal Matters in the preparation and drafting of new bilateral or multilateral agreements;

(e) Continuous strengthening of understanding of legal bases accepted by other countries, as well as understanding of national procedures and requirements of countries with which cooperation may be required;

(f) Reviewing, on a continuous basis, cooperation needs and countries' own accepted legal bases for cooperation, including bilateral and multilateral agreements, reciprocity or comity, and national legislation.

III. Enhancing the coordinating functions of central authorities designated under article 18, paragraph 13, of the Organized Crime Convention

A. Background

38. Article 18, paragraph 13, of the Organized Crime Convention requires States parties to designate a central authority with the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. A similar obligation is contained in article 7, paragraph 8, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and in article 46,

paragraph 13, of the Convention against Corruption. In addition to the requirement of article 18, paragraph 13, of the Organized Crime Convention, States parties to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Organized Crime Convention, are required to designate an authority or authorities to receive and respond to requests relating to vessels (art. 8, para. 6, of that Protocol). States parties to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the Organized Crime Convention, must also identify a national body or single point of contact to act as a liaison on matters relating to the Protocol (art. 13, para. 2, of that Protocol).

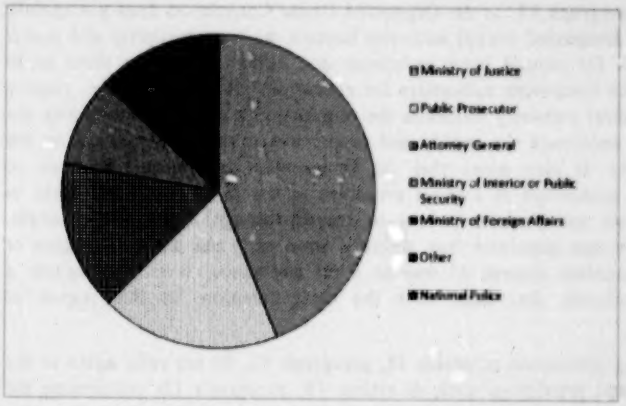
39. Pursuant to decisions 2/2 and 3/2 of the Conference, the Secretariat collects information on central authorities for mutual legal assistance, designated pursuant to article 18, paragraph 3, of the Organized Crime Convention.[22] The Secretariat also collects information on authorities competent to receive and respond to requests for extradition and transfer of sentenced persons under articles 16 and 17 of the Convention, as well as requests related to vessels under article 18, paragraph 13, of the Smuggling of Migrants Protocol, and to firearms, their parts and components and ammunition under article 13, paragraph 2, of the Firearms Protocol. Designations received under these articles of the Convention and its Protocols have been integrated by the Secretariat into the pre-existing directory of competent national authorities, initially created for designations under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 in respect of requests concerning extradition, mutual legal assistance and illicit traffic by sea.

40. With respect to the designation of a central authority for mutual legal assistance under article 18 of the Organized Crime Convention, notifications from 109 States parties to the Convention have been received and are included in the directory of competent national authorities maintained by the Secretariat.[23] This corresponds to information for about 60 per cent of all States parties to the Convention. Owing to the designation by some States parties of more than one authority, the Directory contains some 136 individual authorities listed under article 18. Figure III shows the distribution of central authorities for mutual legal assistance according to type of authority designated.

[22] Under article 18, paragraph 3, the Secretary-General of the United Nations shall be notified of the central authority designated for this purpose.

[23] See www.unodc.org/compauth/en/index.html.

Figure III
Authorities designated as central authorities for purposes of mutual legal assistance



Source: United Nations Office on Drugs and Crime analysis of information from the directory of competent national authorities.

41. Figure III shows that the three most commonly designated central authorities for mutual legal assistance, representing more than 75 per cent of all such authorities, are ministries of justice, public prosecution offices and offices of the attorney general. In the case of countries that have designated more than one authority, it is often a combination of two or more of those three institutions. One country in Africa, for example, has designated both the Office of the Attorney General and the Director of Public Prosecutions. Similarly, a number of countries have designated both the general prosecutor's office and the ministry of justice. For other countries seeking to cooperate with those countries, it may be useful to understand the distribution of tasks between authorities in such cases. The Secretariat is currently reviewing possibilities for providing clarification in the directory of competent national authorities in this regard.

42. The nature of the central authority designated for purposes of mutual legal assistance is not merely of academic interest. Rather, authority structure is often closely associated with authority function. As a result, the roles, mandate and function of the central authority are dependent, inter alia, on the nature of the government institution within which it is located. A clear understanding of the functions and procedures of national central authorities for mutual legal assistance can, in turn, assist countries in the identification of the most appropriate model for their own central authorities, as well as in the practical preparation and communication of cooperation requests to the central authorities of other countries.

B. Functions of central authorities under bilateral and multilateral agreements and under domestic legislation

43. Article 18, paragraph 13, of the Organized Crime Convention does not specify the functions of a designated central authority beyond the "responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution." It does, however, require that, where the central authority transmits the requests to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. It also notes that the requirement to transmit requests to designated central authorities is without prejudice to the right of a State party to require that requests and communications be routed through diplomatic channels. The same provision also stipulates that, where a State party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory.

44. The remaining provisions of article 18, paragraph 13, do not refer again to the central authority, and provisions such as article 18, paragraph 15, concerning the form of the request, do not presume that a central authority will necessarily make the request itself, referring only to the need for a request to contain "the identity of the authority making the request." From a legal perspective, the Organized Crime Convention thus leaves the exact functions of the central authority open to determination at the national level.

45. In determining the functions of a central authority for the purposes of article 18, paragraph 13, of the Organized Crime Convention, States may consider procedures for requesting and responding to mutual legal assistance requests under national legislation and practice, as well as the identity and role of authorities designated under existing bilateral and other multilateral mutual legal assistance agreements, as well as practical considerations such as available human and financial resources.

46. Bilateral and other multilateral mutual legal assistance agreements can include a requirement to assign a central authority for the transmission and receipt of all requests and responses communicated pursuant to the bilateral or multilateral agreement. Such clauses may be very straightforward, such as "Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The Central Authority for [Party A] shall be [institution]. The Central Authority for [Party B] shall be [institution]."[24]

47. Bilateral treaties may be silent on the role of the central authority for the purposes of the treaty. Alternatively, as shown by a UNODC review of such treaties, some bilateral treaties may specifically assign tasks to the authority, such as the execution of the request; informing the requesting country's authority of the possibility of a delay in responding to the request; keeping requests confidential; consulting with the requesting country's authority; or certifying and authenticating documents and other materials. Where a government institution is already

[24] Taken from a bilateral mutual legal assistance treaty between a country in Europe and a country in Asia.

nominated as a central authority and tasked with certain functions under bilateral or other multilateral agreements, this may be a relevant consideration with respect to the designation and establishment of central authority functions for the purposes of article 18, paragraph 13, of the Organized Crime Convention.

48. In addition to considerations under existing bilateral and multilateral mutual legal assistance agreements, domestic legislation may relate to or specify the functions of a central authority. A review of available national legislation suggests that, globally, over 90 per cent of countries include provisions on mutual legal assistance within their national legislation. Often this is in the format of a law on mutual legal assistance, mutual assistance in criminal matters or international cooperation. Provisions may also be found in a range of other legislation, including criminal procedure codes and organized crime laws.

49. Not all national legislation on mutual legal assistance refers to or sets out the functions of a central authority. Where it does, national legislation may designate a government institution as the central authority, provide a list of its functions and, in some cases, provide a saving clause confirming that the law does not limit the power of the authority to make or receive requests or to cooperate with a foreign State through other channels or means. By way of example, the legal assistance law of one European country specifies that the central authority shall "(1) receive requests for assistance ...; (2) carry out, either directly or through [other] authorities, the execution of requests ...; (3) transmit requests for assistance; as well as (4) carry out translations of documents".

50. In practice, the functions carried out by central authorities for mutual legal assistance vary significantly between countries. Models of central authority functions encountered in the course of UNODC technical assistance work with central authorities include cases where the central authority is itself responsible for preparing, drafting and sending all mutual legal assistance requests; requests are prepared by prosecutors not within the central authority but sent via the central authority or even directly by prosecutors to the requested country; the central authority has full responsibility for the execution of received requests; or the central authority simply transmits received requests to other authorities for execution, depending on the type of assistance requested. Innovative models also include the establishment of a committee of different authorities for handling mutual legal assistance requests under a lead authority and a committee secretariat.

51. As previously noted, the model adopted can depend, inter alia, on the nature of the institution designated as the central authority. Where the central authority is staffed with practising prosecutors or lawyers, for example, the authority may be more likely to engage in the active drafting and preparation of requests. In some cases, the distribution of tasks between central authorities and other authorities is reflected in national legislation. In one country, for example, national law specifically requires other authorities to submit a report to the central authority following their execution of a request, along with the reasons for any impediment to execution of the request.

C. Enhancing the coordinating functions of central authorities

52. Irrespective of the exact model adopted by a central authority for mutual legal assistance, the central authority will almost certainly need to be engaged, in varying degrees, in a coordinating role, both domestically and internationally. This is particularly the case owing to the broad range of actors that have the potential to be involved in the implementation and initiation of requests. Wide-ranging transnational criminal investigations may involve law enforcement, prosecutors or judiciary in the taking of evidence or statements and the execution of searches and seizures; banks, financial intelligence units or tax authorities in the identification or tracing of proceeds or instrumentalities of crime; ministries of telecommunications and information technology in cases of interception of communications data; and an array of other government departments with regard to information required from registers of private enterprises and land, vehicle or firearm ownership.

53. Complex requests received by a central authority may include a number of such different investigative actions, each requiring the involvement of different national authorities. In this respect, it is important for a central authority to retain strong links and effective lines of communication with other government authorities that could be involved in the execution of a request. Whereas this may be evident in the case of contact between the central authority and law enforcement or judicial authorities, central authorities, in some countries, may less frequently handle requests requiring the involvement of institutions such as banking or telecommunications authorities. The appointment, in advance, of international cooperation focal points within such authorities might facilitate timely communication between the central and the executing authorities, if and when such a request is received. The challenge of coordination at the national level may increase in the case of federal States, where central authorities may be required by national law to obtain court orders with respect to requested searches or interception of communications data from a range of state courts.

54. To the extent that central authorities coordinate the execution of incoming requests in conjunction with other authorities, a number of key central authority functions may be considered for enhancing effectiveness at the national level. In the first instance, many central authorities conduct basic checks for the completeness of requests prior to passing them on to other authorities for execution. This may include confirming that information such as that listed in article 18, paragraph 15, of the Organized Crime Convention, i.e. a summary of the relevant facts and a description of the assistance sought, is correctly included in the request; checking whether authentication and certification requirements, where applicable, are met; and confirming whether the language requirements for the submission of the mutual legal assistance request are fulfilled (art. 18, para. 14, of the Organized Crime Convention). Once a checked request has been passed on to another authority for execution, many central authorities assign the action a tracking number and remain in close contact with the executing authority, in accordance with an agreed timeline for the execution of the request and the provision of the requested information to the central authority for onward transmission to the requesting State.

55. With respect to outgoing mutual legal assistance requests, in some countries the central authority may be responsible for collating and sending requests prepared by local law enforcement, prosecution or judicial authorities. The coordinating role

of the central authority in that function may be enhanced through close contact with the drafters of requests, including the provision of advice on possible legal bases that may be used for specific requested countries and advice on the specific procedural requirements of requested countries. A number of central authorities also play a role in reviewing outgoing requests for accuracy and completeness. Once the request has been sent, the central authority can act as an effective bridge between the original requester and the authorities of the requested country.

56. At the national level, some central authorities play a key role in acting as a centre for advice and information on international cooperation for other government authorities. That role can include providing an advisory function during, or even leading, processes of legislative reform; providing practical advice and suggestions to policymakers; and providing training on mutual legal assistance to law enforcement, prosecutors and the judiciary.

57. With regard to the coordinating role of the central authority at the international level, in addition to its core functions of sending and receiving requests, many central authorities also carry out tasks to facilitate the process of international cooperation, which may include the provision of information on national mutual legal assistance laws and procedures to other States prior to the formal submission of a request. In addition, the central authority, as a possible single focal point for incoming and outgoing requests, has the potential to act as a key collector and provider of statistical information on the type of assistance requested as well as the legal basis employed. Such information could be used for internal operational purposes and shared more widely in aggregate form.

58. Finally, the extent to which central authorities are able to perform an effective coordinating role is often dependent upon the availability of resources, in terms of infrastructure, staffing and training opportunities. In this respect, it may be important that the function and role assigned to a central authority be commensurate with the level of resources available. Where resources are limited, a central authority may, for example, choose to orient its activities towards coordination and quality control, and to act as a single point of contact for all incoming and outgoing mutual legal assistance requests, rather than attempting to assume responsibility for the full preparation, drafting and execution of requests. As resources increase, central authorities may subsequently be able to expand activities. Irrespective of the level of resources, however, the principle of designation of a central authority that can be clearly identified by other States parties, and with which they may be in contact for the purpose of requesting mutual legal assistance, is central to the implementation of article 18 of the Organized Crime Convention.

IV. Conclusions and recommendations

59. The Working Group on International Cooperation may wish to recommend that the Conference of the Parties:

(a) Recognize the growing number of States parties to the Organized Crime Convention that have informed the Secretary-General about their intention to take the Convention as the legal basis for cooperation on extradition with other States parties to the Convention, and invite those States parties that have not yet done so,

and that make extradition conditional on the existence of a treaty, to inform the Secretary-General accordingly;

(b) Encourage States parties that do not recognize the Organized Crime Convention as a legal basis for cooperation to actively engage in the negotiation and conclusion of bilateral extradition treaties with other States parties, and draw the attention of such States to the potential interpretative function of the Organized Crime Convention and the Model Treaties on Extradition and Mutual Assistance in Criminal Matters when negotiating, interpreting and implementing existing bilateral agreements;

(c) Encourage Member States to continue their active engagement in the negotiation and implementation of regional multilateral treaties for international cooperation in criminal matters and acknowledge the importance of such agreements for the purpose of, inter alia, broadening the range of legal bases that States can rely on for judicial cooperation in criminal matters;

(d) Acknowledge the importance of the coordinating role of a central authority for mutual legal assistance designated under article 18, paragraph 13, of the Convention, with respect to both domestic and international coordination of the receiving, execution and transmittal of mutual legal assistance requests;

(e) Underline that it is important for central authorities for mutual legal assistance to retain strong links and effective lines of communication with other government authorities that could be involved in the execution of requests for mutual legal assistance;

(f) Highlight the potential role of central authorities in the collection and dissemination of statistical information on judicial cooperation requests, including, inter alia, the nature of the assistance requested or provided, the legal basis for such cooperation and the time needed for the execution of the requests;

(g) Consider requesting the Secretariat to collect information from States parties on different possible models for central authorities for mutual legal assistance, with a view to the sharing of experience between States parties wishing to establish or strengthen a central authority, as well as to the gaining of a better understanding of their functioning and operation at the domestic and international levels.